
SENATE BILL 5910

State of Washington 60th Legislature 2007 Regular Session

By Senators Brandland, Kline, Weinstein and Parlette

Read first time 02/06/2007. Referred to Committee on Judiciary.

1 AN ACT Relating to prefiling notice of intent to commence a medical
2 malpractice action; and amending RCW 7.70.100.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 7.70.100 and 2006 c 8 s 314 are each amended to read
5 as follows:

6 (1) No action based upon a health care provider's professional
7 negligence may be commenced unless the defendant has been given at
8 least ninety days' notice of the intention to commence the action. The
9 notice required by this section shall be given by regular mail,
10 registered mail, or certified mail with return receipt requested, by
11 depositing the notice, with postage prepaid, in the post office
12 addressed to the defendant. If the defendant is a health care provider
13 entity defined in RCW 7.70.020(3) or, at the time of the alleged
14 professional negligence, was acting as an actual agent or employee of
15 such a health care provider entity, the notice may be addressed to the
16 chief executive officer, administrator, office of risk management, if
17 any, or registered agent for service of process, if any, of such health
18 care provider entity. Proof of notice by mail may be made in the same
19 manner as that prescribed by court rule or statute for proof of service

1 by mail. If the notice is served within ninety days of the expiration
2 of the applicable statute of limitations, the time for the commencement
3 of the action must be extended ninety days from the (~~service of~~) date
4 the notice was mailed, and after the ninety-day extension expires, the
5 claimant shall have an additional five court days to commence the
6 action.

7 (2) The provisions of subsection (1) of this section are not
8 applicable with respect to any defendant whose name is unknown to the
9 plaintiff at the time of filing the complaint and who is identified
10 therein by a fictitious name.

11 (3) After the filing of the ninety-day presuit notice, and before
12 a superior court trial, all causes of action, whether based in tort,
13 contract, or otherwise, for damages arising from injury occurring as a
14 result of health care provided after July 1, 1993, shall be subject to
15 mandatory mediation prior to trial except as provided in subsection (6)
16 of this section.

17 (4) The supreme court shall by rule adopt procedures to implement
18 mandatory mediation of actions under this chapter. The implementation
19 contemplates the adoption of rules by the supreme court which will
20 require mandatory mediation without exception unless subsection (6) of
21 this section applies. The rules on mandatory mediation shall address,
22 at a minimum:

23 (a) Procedures for the appointment of, and qualifications of,
24 mediators. A mediator shall have experience or expertise related to
25 actions arising from injury occurring as a result of health care, and
26 be a member of the state bar association who has been admitted to the
27 bar for a minimum of five years or who is a retired judge. The parties
28 may stipulate to a nonlawyer mediator. The court may prescribe
29 additional qualifications of mediators;

30 (b) Appropriate limits on the amount or manner of compensation of
31 mediators;

32 (c) The number of days following the filing of a claim under this
33 chapter within which a mediator must be selected;

34 (d) The method by which a mediator is selected. The rule shall
35 provide for designation of a mediator by the superior court if the
36 parties are unable to agree upon a mediator;

37 (e) The number of days following the selection of a mediator within
38 which a mediation conference must be held;

1 (f) A means by which mediation of an action under this chapter may
2 be waived by a mediator who has determined that the claim is not
3 appropriate for mediation; and

4 (g) Any other matters deemed necessary by the court.

5 (5) Mediators shall not impose discovery schedules upon the
6 parties.

7 (6) The mandatory mediation requirement of subsection (4) of this
8 section does not apply to an action subject to mandatory arbitration
9 under chapter 7.06 RCW or to an action in which the parties have
10 agreed, subsequent to the arisal of the claim, to submit the claim to
11 arbitration under chapter 7.04A or 7.70A RCW.

12 (7) The implementation also contemplates the adoption of a rule by
13 the supreme court for procedures for the parties to certify to the
14 court the manner of mediation used by the parties to comply with this
15 section.

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